

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROUVER CAPITAL PARTNERS, L.P.	:	CIVIL ACTION
	:	
v.	:	
	:	
HEALTHCARE ACQUISITION, INC. and	:	
HOME QUALITY MANAGEMENT, INC.	:	NO. 99-3535

**MEMORANDUM AND ORDER**

BECHTLE, J. MARCH , 2000

Presently before the court is defendants Healthcare Acquisition, Inc.'s and Home Quality Management, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint or, Alternatively, to Transfer Venue and plaintiff Trouver Capital Partners, L.P.'s response thereto. For the reasons set forth below, the court will deny the motion.

**I. BACKGROUND**

Plaintiff, Trouver Capital Partners, L.P. ("Trouver") is a Delaware partnership with its principal place of business in Newtown, Pennsylvania. (Defs.' Mem. of Law in Supp. of Mot. to Dismiss at 1-2.) Defendants Healthcare Acquisition, Inc. ("HAI") and Home Quality Management, Inc. ("HQM") (collectively "Defendants") are Florida corporations having their principal places of business in Palm Beach Gardens, Florida. Id. at 2. Elizabeth Fago ("Fago") is the "principal" of both HAI and HQM. Id.; Compl. ¶ 4.<sup>1</sup> Fago is a Florida resident. Id. John Lynch

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<sup>1</sup> Fago is one of HAI's and HQM's three shareholders. (Compl. ¶ 4.) She is the President of both HAI and HQM. (Fago Aff. ¶ 1; Compl. ¶¶ 11 & 22.)

("Lynch") was the "principal of Woodhill Capital Corporation, a Pennsylvania corporation functioning as a general partner" of Trouver. (Lynch Aff. at 1.) Lynch executed the agreement between Trouver and HAI. Id.

Trouver initiated this action for breach of contract and anticipatory breach in connection with an agreement under which HAI retained Trouver to provide financial advisory and investment banking services relating to HAI's efforts to secure funding for various projects, including the acquisition of three assisted living facilities in North Carolina. (Pl.'s Resp. to Mot. to Dismiss at 1-2.) Trouver asserts that after HAI acquired the property in North Carolina, Trouver arranged for valuations of the properties, for the placement of two bridge loans and for permanent financing of the project. Id. at 2. Trouver contends that it is entitled to compensation for these services. Id.

On December 16, 1999, Trouver filed its Amended Complaint. On January 24, 2000, Defendants filed the instant motion to dismiss the Amended Complaint for lack of personal jurisdiction or, alternatively, to transfer venue to the United States District Court for the Southern District of Florida. (Defs.' Mem. of Law in Supp. of Mot. to Dismiss at 1-2.) For the reasons set forth below, the court will deny the motion to dismiss or transfer venue.

## **II. LEGAL STANDARD**

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

## **III. DISCUSSION**

First, Defendants assert that under Federal Rule of Civil Procedure 12(b)(2), they have insufficient contacts with Pennsylvania to justify the exercise of personal jurisdiction in this forum. Second, Defendants assert that this action should be transferred to the Southern District of Florida pursuant to 28 U.S.C. § 1404. The court will address each argument separately.

### **A. Personal Jurisdiction**

In a case based upon diversity jurisdiction, Federal Rule of Civil Procedure 4(e) "gives a federal court personal jurisdiction over non-resident defendants to the extent permissible under the state law of the jurisdiction where the court sits." Grand Entertainment Group, Ltd. v. StarMedia Sales, Inc., 988 F.2d 476, 481 (3d Cir. 1993). Under Pennsylvania's long-arm statute, jurisdiction may be exercised "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Con. Stat. Ann. § 5322(b). An analysis of the constitutional limitations on personal jurisdiction involves a two prong test, including inquiries into minimum contacts and fair play and substantial justice. Asahi Metal Indus. Co. v. Superior Court of California, Solano County, 480 U.S. 102 (1987). The court will review each prong separately.

#### **1. Minimum Contacts**

When a defendant raises the defense of lack of personal jurisdiction, the plaintiff has the burden of establishing sufficient facts to show that jurisdiction is proper. Carteret Sav. Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992). A plaintiff meets this burden by "establishing with reasonable particularity sufficient contacts between the defendant and the forum state." Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (citations and internal

quotations omitted). In Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), the Supreme Court stated that:

[j]urisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum state. . . . Thus where the defendant "deliberately" has engaged in significant activities within a State . . . or has created "continuing obligations" between himself and residents of the forum . . . he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws, it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 475-76.

The court finds that Trouver has met its burden of establishing sufficient minimum contacts between Defendants and Pennsylvania. The record reveals that a number of telephone and telefax communications were made between Lynch and Fago. (Pl.'s Resp. to Mot. to Dismiss at 7 & Ex. B.) Lynch states that HAI and Trouver exchanged mail and regular telephone calls. (Lynch Aff. at 1.) See Grand Entertainment, 988 F.2d at 482 (stating that "[m]ail and telephone communications sent by the defendant into the forum may count toward the minimum contacts that support jurisdiction" and that "contract negotiations with forum residents can empower a court to exercise personal jurisdiction over persons outside the forum") (citations omitted).

In addition, Fago, the president of both HAI and HQM, was present in Pennsylvania "on a number of occasions" when she visited Lynch. (Defs.' Mem. of Law in Supp. of Mot. to Dismiss at 7.) Fago acknowledges that she visited Pennsylvania, however,

she contends that every visit was of a "purely . . . personal" nature and that each visit "had nothing to do with the performance of the contract" with Trouver. (Defs.' Mem. of Law in Supp. of Mot. to Dismiss at 6; Fago Aff. ¶ 4.) Lynch contends that the visits were business related. For example, Lynch states that he and Fago "had an all day meeting in Bucks County on September 11 to discuss various HAI financing issues." (Lynch Aff. ¶ 11; see also Lynch Aff. ¶¶ 13, 16, 24 & 27 (describing business related meetings between Fago and Lynch that took place in Pennsylvania from September 1998 to December 1998)).

Additionally, the court notes that, as the president of HAI and HQM, Fago played a major role in each corporation. In Banyan Healthcare Servs., Inc. v. Lainq, the court stated that where the defendant "played a major role in [a] corporation . . . his contacts with Pennsylvania in a corporate context count towards the minimum contacts necessary for due process as well as his personal contacts with the Commonwealth" and found that the defendant had sufficient contacts where he made one visit to Pennsylvania in addition to numerous phone calls and faxes.

Banyan Healthcare Servs., Inc. v. Lainq, No. Civ.A.98-2004, 1998 WL 633991, at \*3 (E.D. Pa. Aug. 20, 1998) (citing TJS Brokerage & Co., Inc. v. Mahoney, 940 F. Supp. 784, 788-89 (E.D. Pa. 1996)). Thus, the court finds that Defendants' contacts with Pennsylvania constitute minimum contacts necessary for the court to exercise personal jurisdiction over Defendants. See Carteret, 954 F.2d at 149-50 (holding that, coupled with telephone calls and letters to

forum, attendance at single meeting in forum was sufficient to establish minimum contacts). Thus, the court will deny the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2).

## **2. Fair Play and Substantial Justice**

The second element required to find personal jurisdiction is that "the defendant's contacts with the forum State must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." World-Wide Volkswagen Corp., 444 U.S. at 292 (citations and internal quotations omitted). The court will review several factors which evaluate the respective interests involved, including "'the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.'" Pennzoil Prods. Co., 149 F.3d 197, 205 (3d Cir. 1998) (quoting Burger King, 471 U.S. at 477).

The "burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy." Grand Entertainment, 988 F.2d at 482. Defendants fail to assert any grounds as to how HAI or HQM would be unduly burdened by litigating this action in Pennsylvania. On the other hand, the court recognizes that Trouver has an interest in obtaining relief

in this action and that the court is well-suited to provide such relief. In addition, Pennsylvania has an interest in this dispute, as Trouver's principal place of business is located here. The court finds that the assertion of personal jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice.

**B. Venue**

Defendants challenge venue under 28 U.S.C. § 1391, which provides in relevant part:

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a). As the preceding discussion indicates, the court finds that a substantial part of the events or omissions giving rise to the claim occurred in Pennsylvania. Accordingly, the court has jurisdiction under § 1391(a)(2).

Defendants have alternatively moved this court to transfer the action, pursuant to 28 U.S.C. § 1404(a), to the United States District Court for the Southern District of Florida. That section provides that: "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).



In deciding whether to transfer an action, the court shall consider the following private and public interests:

The private interests have included: plaintiff's forum preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses--but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; and the familiarity of the trial judge with the applicable state law in diversity cases.

Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995) (citations and internal quotations omitted). The burden of establishing that the balance of proper interests weighs in favor of transfer rests with the movant. Id. In ruling on a motion to transfer, "plaintiff's choice of venue should not be lightly disturbed." Id. (citation and internal quotation omitted).

Trouver has a strong interest in choosing the Pennsylvania venue. Defendants have not indicated that any witness would be unavailable for trial if the litigation were to be conducted in Pennsylvania. Thus, the court will not consider the convenience of these witnesses as a factor in deciding whether transfer is appropriate. Similarly, Defendants have not indicated that any books or records would be unavailable for a trial held in

Pennsylvania. Other private factors, such as the convenience of the parties as related to their physical and financial conditions, do not favor either venue.

The public interests to be considered by the court do not weigh in favor of either venue. Travel will be necessary whether the case is tried in Pennsylvania or in Florida. A judgment in either court would be subject to full faith and credit in either venue. This civil action involves relatively straightforward issues of contract law and does not appear to involve any special issues of state law. In conclusion, the court finds no reason to disturb Trouver's choice of the Pennsylvania venue in this civil action. Thus, the court will deny Defendants' motion to transfer venue.

### **III. CONCLUSION**

For the foregoing reasons, the court will deny Defendants' Motion to Dismiss the Amended Complaint, or, in the Alternative, to Transfer Venue.

An appropriate Order follows.

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HEALTHCARE ACQUISITION, INC. and	:	
HOME QUALITY MANAGEMENT, INC.	:	NO. 99-3535

ORDER

AND NOW, TO WIT this            day of March, 2000, upon consideration of defendants Healthcare Acquisition, Inc.'s and Home Quality Management, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint or, Alternatively, to Transfer Venue and plaintiff Trouver Capital Partners, L.P.'s response thereto, IT IS ORDERED that said motion is DENIED.

IT IS FURTHER ORDERED that defendants Healthcare Acquisition, Inc.'s and Home Quality Management, Inc.'s Motion to Dismiss Plaintiff's Complaint or, Alternatively, to Transfer Venue is DENIED AS MOOT.

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LOUIS C. BECHTLE, J.